Ramanoojum a/l Muniandy & Ors v Ketua Setiausaha, Kementerian Dalam Negeri & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01–433–10 OF 2012
ALIZATUL KHAIR, HAMID SULTAN AND ABANG ISKANDAR JJCA
22 MARCH 2016

Constitutional Law — Citizenship — Citizenship by operation of law — Appellants applied for registration of citizenship by operation of law — Whether appellants applied for extension of time — Whether appellant satisfied requirement under s 1(c) of Part II of the Second Schedule of the Federal Constitution read together with art 14(1)(b)

The first appellant filed an originating summons in the High Court for an order declaring the second and third appellants (his children) as citizens of Malaysia. The High Court granted the order and the respondents appeal against the decision but did not apply for stay. In the meantime in compliance with the said High Court order the second and third appellants submitted their applications for registration of their birth at the Malaysian Consulate in India. The said applications were accepted by the consulate and a processing fee of RM20 was paid for each application. On 21 March 2011, the Court of Appeal set aside the said High Court order but held that the appellants were not prevented from making the necessary application. On 21 September 2011 the first respondent issued a letter to the appellants informing them that their applications had been rejected for two reasons: (a) the appellants have acquired Indian citizenship; and (b) they never resided in Malaysia. The appellants filed a judicial review application challenging the decision. The learned judge, after hearing the application, granted the order of certiorari (prayer 1) and quashed the said decision. The learned judge however dismissed the appellants' applications for an order of mandamus (prayer 2) because the learned judge was of the view that as there had been no application for extension of time made by the appellants, s 1(c), Part II of the Second Schedule of the Federal Constitution ('the Constitution') had not been complied with and accordingly the appellants were not entitled to an order of mandamus. Hence, the present appeal. The appellant contended that the fact that the respondents succeeded in their appeal against the said High Court order made no difference as the appellants have already complied with the relevant provisions of the Constitution since there was no stay pending the disposal of the appeal. Further, whilst the Court of Appeal had reversed the said High Court order, it also gave liberty to the appellants to make the necessary applications. More importantly according to learned counsel there was a letter from senior federal counsel of the Attorney General's Chambers dated 8 April 2011 to the

respondents informing the respondents to process the application. The respondents on the other hand argued that since the appellants never made any attempt to seek for an extension of time to register the births of the second and third appellants as required by s 1(c) of Part II of the Second Schedule read together with art 14(1)(b) of the Constitution, the conditions for an order of mandamus to be issued have not been satisfied by the appellants.

Held, allowing the appeal with costs of RM10,000:

(1) Under s 1(c), Part II of the Second Schedule the qualifications required of a person born outside the Federation (after Malaysia Day) to be a citizen by operation of law was that he or she must be registered with the Malaysian Consulate within one year of the person's birth or within such longer period as the Federal Government may in any particular case allow. While this implies that there must be an application for extension of time if a person's birth is to be registered outside the one year period, the fact remains that the appellants' applications to be registered as citizens by operation of law was accepted by the Malaysian Consulate and the processing fee of RM20 was paid even though they were not applications for extension of time. Even after the High Court order was set aside, the AG's Chambers continued to treat the appellants' existing applications as correct and proper as evidenced by their letter of 8 April 2011. It was only the second respondent that had erroneously treated the appellants' applications as an application for extension of time and decided to reject it (see paras 51–53).

(2) Having treated and accepted the appellants' applications as applications for the registration of the second and third appellants as citizens by operation of law and the respondents not appealing against the order of the court quashing the decision of the second respondent, it could be inferred thereby that the Federal Government had impliedly agreed to allow the registration of the appellants' birth beyond the one year period (without the necessity of an application for extension of time). Section 1(c) did not prescribe the manner in which such extension may be applied for, as long as it can be shown that the appellants have complied in substance with the requirements of s 1(c) that was sufficient compliance. The court was of the view that the appellants had satisfied the requirements of s 1(c). As such, it was therefore incumbent on the second respondent to process the appellants' applications and issue the documents prayed for by the appellants in prayer 2 of the judicial review application (see paras 54–57).

[Bahasa Malaysia summary

Perayu memfailkan saman pemula di Mahkamah Tinggi bagi perintah mengisytiharkan perayu kedua dan ketiga (anak-anaknya) sebagai warganegara Malaysia. Mahkamah Tinggi mengeluarkan perintah tersebut dan

responden-responden merayu terhadap keputusan tersebut tetapi tidak memohon untuk menggantungnya. Pada masa yang sama, sebagai mematuhi perintah Mahkamah Tinggi, perayu kedua dan ketiga mengemukakan permohonan pendaftaran kelahiran mereka di Konsulat Malaysia di India. Permohonan tersebut diterima oleh Konsulat dan yuran pemprosesan sebanyak RM20 dibayar bagi setiap permohonan. Pada 21 Mac 2011, Mahkamah Rayuan mengetepikan perintah Mahkamah Tinggi tersebut tetapi memutuskan bahawa perayu-perayu tidak terhalang daripada membuat permohonan yang sepatutnya. Pada 21 September 2011, responden pertama mengirim surat kepada perayu-perayu, memaklumkan mereka bahawa permohonan mereka ditolak atas dua sebab: perayu-perayu memperolehi kewarganegaraan India; dan mereka tidak pernah tinggal di Malaysia. Perayu-perayu memfailkan permohonan semakan kehakiman, mencabar keputusan tersebut. Selepas mendengar permohonan, hakim membenarkan perintah certiorari ('permohonan 1') dan membatalkan keputusan tersebut. Walau bagaimanapun, hakim menolak permohonan perayu-perayu bagi satu perintah mandamus ('permohonan 2') kerana hakim berpendapat bahawa kerana tiada permohonan bagi lanjutan masa oleh perayu-perayu; s 1(c), Bahagian II Jadual Kedua Perlembagaan Persekutuan ('Perlembagaan') tidak dipatuhi dan oleh itu, perayu-perayu tidak berhak mendapat perintah mandamus. Oleh itu, rayuan ini. Perayu menghujahkan bahawa fakta bahawa responden-responden berjaya dalam rayuan mereka terhadap perintah Mahkamah Tinggi tidak membawa apa-apa perbezaan kerana perayu-perayu telah mematuhi peruntukan-peruntukan relevan Perlembagaan memandangkan tiada penggantungan sementara pelupusan rayuan. Tambahan lagi, sementara Mahkamah Rayuan mengakas perintah Mahkamah Tinggi, perayu-perayu juga mempunyai kebebasan membuat permohonan-permohonan yang perlu. Lebih penting lagi, terdapat surat daripada Peguam Persekutuan Kanan Pejabat Peguam Negara bertarikh 8 April 2011 kepada responden-responden yang memaklumkan responden-responden tentang proses permohonan. Responden-responden sebaliknya menghujahkan bahawa oleh kerana perayu-perayu tidak membuat apa-apa usaha untuk lanjutan masa mendaftarkan kelahiran perayu kedua dan ketiga seperti yang diperlukan oleh s 1(c) Bahagian II, Jadual Kedua dibaca bersama-sama dengan perkara 14(1)(b) Perlembagaan, syarat-syarat agar perintah mandamus dikeluarkan tidak dipenuhi oleh perayu-perayu.

Diputuskan, membenarkan rayuan dengan kos RM10,000:

(1) Di bawah s 1(c), Bahagian dua, Jadual kedua, kelayakan yang diperlukan untuk orang yang dilahirkan di luar Persekutuan (selepas Hari Malaysia) menjadi warganegara menerusi operasi undang-undang adalah agar didaftarkan di Konsulat Malaysia dalam satu tahun kelahirannya atau dalam tempoh yang lebih panjang kerana Kerajaan Persekutuan dalam apa jua kes, mungkin membenarkannya. Walaupun ini menunjukkan

bahawa mesti terdapat permohonan lanjutan masa jika seseorang itu didaftarkan luar tempoh satu tahun, fakta kekal bahawa permohonan perayu-perayu perlu didaftarkan sebagai warganegara melalui operasi undang-undang diterima oleh Konsulat Malaysia dan yuran pemprosesan RM20 dibayar walaupun ia bukan permohonan lanjutan masa. Malah selepas perintah Mahkamah Tinggi diketepikan, Pejabat Peguam Negara kekal menganggap permohonan sedia ada perayu-perayu sebagai betul dan teratur seperti yang dibuktikan oleh surat mereka bertarikh 8 April 2011. Responden kedua yang terkhilaf dalam menganggap permohonan perayu sebagai permohonan lanjutan masa dan memutuskan untuk menolaknya (lihat perenggan 51–53).

(2) Selepas mengganggap dan menerima permohonan perayu-perayu sebagai permohonan pendaftaran perayu kedua dan ketiga sebagai warganegara menerusi operasi undang-undang dan responden-responden tidak merayu terhadap perintah mahkamah membatalkan keputusan responden kedua, boleh disimpulkan bahawa Kerajaan Persekutuan telah, secara tersirat, bersetuju untuk membenarkan pendaftaran kelahiran perayu-perayu melebihi tempoh satu tahun (tanpa keperluan permohonan bagi lanjutan masa). Seksyen 1(c) tidak menyatakan cara bagaimana lanjutan tersebut boleh dipohon, asalkan ditunjukkan bahawa perayu-perayu telah mematuhi keperluan s 1(c) iaitu pematuhan secukupnya. Mahkamah berpendapat bahawa perayu-perayu telah memenuhi keperluan-keperluan s 1(c). Dengan itu, penting buat responden kedua memproses permohonan perayu-perayu dan mengeluarkan dokumen-dokumen yang dipohon oleh perayu-perayu dalam permohonan 2 permohonan semakan kehakiman (lihat perenggan 54–57).]

Notes

For cases on citizenship by operation of law, see 3(2) *Mallal's Digest* (5th Ed, 2015) paras 2398–2400.

Cases referred to

Haja Mohideen bin MK Abdul Rahman & Ors v Menteri Dalam Negeri & Others [2007] 8 MLJ 1; [2007] 6 CLJ 662, HC (refd)

Koon Hoi Chow v Pretam Singh [1972] 1 MLJ 180b, HC (refd)

Legislation referred to

Federal Constitution art 14(1), 14(1)(b), Second Schedule, Part II, s 1(c)

Specific Relief Act 1950 s 44(1), (1)(b)

Appeal from: Judicial Review No R2-25–271–11 of 2011 (High Court, Kuala Lumpur)

M Manoharan (M Manoharan & Co) for the appellants.
Shamsul bin Bolhassan (Kogilambigai a/p Muthusamy with him (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Alizatul Khair JCA:

[1] This is an appeal against the decision of the learned High Court judge who had dismissed the appellants' application for an order of mandamus to compel the respondents to issue the birth certificates, citizenship and MyKad to the second and third appellants.

[2] We had, after hearing submission from learned counsel for the appellants, learned senior federal counsel for the respondents, unanimously allowed the appeal.

[3] The background facts are important to understand the context in which this appeal was brought.

BACKGROUND FACTS

[4] The first appellant, a Malaysian citizen married one, Pusham a/p Nagalingam an Indian citizen on 13 September 1960. The first appellant's wife gave birth to the second and third appellants on 20 May 1975 and 19 July 1978 respectively in India.

[5] In February 1978 the first appellant's wife sought to renew her passport which was due to expire. However she faced problems renewing her passport at the Malaysian Consulate in Madras, India. Efforts were made by the government to bring back the first appellant's wife and children to Malaysia but to no avail.

[6] The first appellant then filed Originating Summons No R1-24–70 of 2007 and on 12 November 2009 it was granted an order by the High Court declaring the second and third appellants as Malaysian citizens by virtue of art 14(1)(b) of the Federal Constitution (art 14(1)(b)) subject to the following terms:

(a) a formal application is made by the second and third appellants to the Consulate General of Malaysia in India; and

(b) upon receipt of the application and verification of their births, the second and third appellants were to be furnished with certificates of citizenship and MyKad identification cards.

An extract of the order of the High Court (the said High Court order) reads as

follows:

> *ADALAH DIPERINTAHKAN* bahawa Plaintif Kedua, THIRUPATHI A/L RAMANUJAM dan Plaintiff Ketiga, MEENA A/P RAMANUJAM adalah warganegara Malaysia yang sah di sisi undang-undang berikutan Perkara 14(1)(b) Perlembagaan Persekutuan, Malaysia tertakluk kepada suatu permohonan secara formal difailkan oleh Plaintif Kedua dan Plaintiff Ketiga untuk pendaftaran kelahiran mereka di Suruhanjaya Malaysia di India dalam tempoh tiga (3) bulan dari tarikh hari ini *DAN SELANJUTNYA DIPERINTAHKAN* bahawa setelah pemfailan permohonan formal tersebut dan setelah verifikasi kelahiran mereka, Plaintif Kedua dan Plaintif Ketiga masing-masing mestilah diberi, Sijil Kewarganegaraan dan Kad Pengenalan MyKad bagi Plaintif Kedua dan Ketiga *DAN AKHIRNYA DIPERINTAHKAN* bahawa tiada perintah mengenai kos.

[7] The respondents appealed against the said High Court order but did not apply for a stay.

[8] In the meantime in compliance with the said High Court order the second and third appellants submitted their application for registration of their birth at the Malaysian Consulate in India. The said applications were accepted by the consulate. A processing fee (or 'Bayaran pendaftaran kelahiran Luar Negara') of RM20 was paid for each application on 24 May 2010 (exh RM16).

[9] On 21 March 2011 the Court of Appeal set aside the said High Court Order but held that the appellants are not prevented from making the necessary application ... ('Responden-Responden tidak dihalang untuk membuat permohonan yang diperlukan' exh RM17).

[10] On 21 September 2011 the first respondent issued a letter to the appellants informing them that their applications had been rejected (the first respondent's decision).

THE JUDICIAL REVIEW APPLICATION

[11] Arising out of the first respondent's decision, the appellants filed a judicial review application challenging the decision. In the letter conveying their decision, the first respondent stated that they *rejected the appellant's application for an extension of time to register the birth of the second and third appellants* for two reasons:

(a) the appellants have acquired Indian citizenship; and

(b) they never resided in Malaysia.

We reproduce below the relevant part of the first respondent's letter dated 21 September 2011.

Dukacita dimaklumkan bahawa permohonan tuan *melanjutkan tempoh pendaftaran kelahiran kanak-kanak yang lahir di luar Negara* di bawah Seksyen 1(c) Jadual Kedua, Bahagian II Perlembagaan Persekutuan *adalah tidak berjaya kerana setelah disemak sabjek didapati memiliki taraf kewarganegaraan India dan tidak bermastautin di Malaysia*.

[12] The learned judge, after hearing the application, granted the order of certiarori prayed for by the appellants in prayer (1) of their application and quashed the said decision. In her grounds of judgment the learned judge found as follows as regards the first respondent's decision:

[11] I have examined the impugned decision. The Respondent states in the letter that the application by the applicants for extension of time under s 1(c) of Part II of the Second Schedule was declined. The applicants however did not apply for any extension of time. The applicants relied on the Order of the High Court which makes no mention of the requirement to extend time stipulated under s 1(c) of Part II of Second Schedule. Section 1(c) provides as follows:

> Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that to say:
>
> (a) ...
>
> (b) ...
>
> (c) Every person born outside the Federation whose father is at the time of birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow, registered at a consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di- Pertuan Agong, registered with the Federal Government;
>
> (d) ...
>
> (e) ...

[12] It would appear that the High Court order makes no requirement on the applicants to apply for any extension of time as spelled out under s 1(c) of Part II, Second Schedule. There is no doubt that the applicant never apply (sic) for any extension of time ...

[14] For this reason I hold the view that the decision declining something which was never applied for is therefore tainted with irrationality, in the sense of *Council of Civil Service Unions and others v Minister for the Civil Service* [1984] 3 All ER 935, referring to the concept of *Wednesbury* unreasonableness in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223.

...

It is my considered view that the impugned decision is liable to be quashed on this ground. For the above reason I allow the application of the applicant in prayer 1.

[13] The learned judge however dismissed prayer (2) of the appellant's application for judicial review. In prayer (2) of their application, the appellants sought the following order:

> 2. Pemohon diberi kebenaran untuk memohon suatu *perintah mandamus* (an application for leave to apply for an order of mandamus) *mengarahkan responden-responden untuk mengeluarkan Sijil Kelahiran, Kewarganegaraan dan Kad Pengenalan MyKad* kepada pemohon-pemohon kedua dan ketiga. (Emphasis added.)

This is the part of the High Court's order that the appellants are appealing against. The respondents did not appeal against the learned judge's decision to grant prayer (1).

[14] In dismissing the appellant's application for an order of mandamus the learned judge held as follows:

> ... in my view the applicants are not entitled to be granted with a writ of mandamus sought because s 44 requires cumulative compliance with all the conditions listed out, in that provision. The applicants had not fulfilled the requirement particularly s 44(1)(b) of the SRA 1950, for writ of mandamus to be issued.

[15] In arriving at the aforesaid conclusion, the learned judge found that the appellants 'had not complied with the second limb of the requirement under s 1(c) of Part II, Second Schedule, hence there is no duty on the Federal Government to exercise its discretion nor to register the applicants as citizen (sic)'.

(see para 30, p 27 of the *rekod rayuan tambahan*).

More specifically the learned judge found that there was never any attempt by the appellant herein to seek for an extension of time to register the second and third appellants' birth as required under s 1(c) of the Second Schedule of the Federal Constitution. It was the learned judge's view that art 14(1)(b) must be read together with s 1(c), Part II of the Second Schedule of the Federal Constitution and as the appellants had failed to comply with the second limb of the requirement under s 1(c) of Part II of the Second Schedule (in that they had failed to apply for an extension of time to register the second and third appellant's birth) there is therefore no duty on the part of the Federal Government to exercise its discretion nor to register the appellants as citizens.

THE APPEAL

[16] Before us learned counsel for the appellants submitted that it was an undisputed fact that:

(a) the second and third appellants were born in India;

(b) the second and third appellants' births were not registered with the Malaysian consulate in India within one year of their births;

(c) pursuant to the said High Court order (the order not having been stayed), the appellants filed their application to register the births of the second and third appellants within the three month period stipulated in the above said High Court order; and

(d) the appellants have paid the processing fee ('Bayaran Pendaftaran Kelahiran Luar Negara') of RM20 for each appellant on 24 May 2010.

[17] Learned counsel contended that the fact that the respondents succeeded in their appeal against the said High Court order of 12 November 2009 made no difference as the appellants have already complied with the relevant provisions of the Federal Constitution since there was no stay pending the disposal of the appeal.

[18] Further whilst the Court of Appeal had reversed the said High Court order, it also gave liberty to the appellants to make the necessary applications. More importantly according to learned counsel there is a letter from senior federal counsel of the Attorney General's Chambers dated 8 April 2011 (erroneously stated as 8 April 2010) to the respondents (exh RM19) stating, inter alia, as follows:

> Kamar ini dimaklumkan bahawa permohonan tersebut sekarang berada di Kementerian Dalam Negeri dan menunggu arahan selanjutnya dari Kamar ini.
>
> *Oleh sebab Responden-Responden telah pun membuat permohonan dan pembayaran telah pun dibuat, maka permohonan tersebut diproses seperti permohonan vang lain*.
>
> (Emphasis added.)

[19] The appellants' birth has now been registered at the Consulate- General of Malaysia in India within three (3) months from the date of the said High Court order. The registration at the Consulate General of Malaysia took place before 18 January 2010 and it was confirmed by letter dated 18 January 2010 by the Consulate General of Malaysia in India (exh RM15).

[20] The extension of time to register their birth was given by the High Court.

[21] The appellants have duly complied with the said High Court order by registering the second and third appellants' birth at the Consulate General of Malaysia in India.

[22] The respondents did not apply for any stay of the said High Court order.

[23] Since the second and third appellants have registered their birth at the consulate, then by virtue of art 14(1)(b) read together with s 1(c) Part II of the Second Schedule of the Federal Constitution, the second and third appellants are citizens by operation of law. The appellants relied on the case of *Haja Mohideen bin MK Abdul Rahman & Ors v Menteri Dalam Negeri & Others* [2007] 8 MLJ 1; [2007] 6 CLJ 662.

[24] The respondents on the other hand argued that the learned High Court judge was correct when Her Ladyship decided that the appellants had failed to comply with the qualifications prescribed under s 1(c) Part II of the Second Schedule of the Federal Constitution. It was apparent from the facts before the court that the appellants never made any attempt to seek for an extension of time to register the births of the second and third appellants as required by s 1(c) Part II of the Second Schedule of the Federal Constitution.

[25] As the appellants had failed to comply with the requirement of s 1(c) Part II of the Second Schedule of the Federal Constitution read together with art 14(1)(b) the conditions for an order of mandamus to be issued have not been satisfied by the appellants.

In particular the learned judge found that the appellants had failed to fulfill the condition in para (b) of s 44(1) of the Specific Relief Act 1950 ('the SRA') and as all five conditions in s 44(1) are cumulative and must be fulfilled (per Sharma J in *Koon Hoi Chow v Pretam Singh* [1972] 1 MLJ 180b), the learned judge was correct in holding that the appellants had failed to bring themselves within the purview of the said s 44(1). Accordingly the learned judge did not err when she refused to grant the order of mandamus prayed for by the appellants.

OUR DECISION

[26] As stated earlier after considering the submissions of learned counsel for the appellants and learned senior federal counsel we found merits in the appellant's submission and allowed the appeal. Our reasons are as follows:

Article 14(1)(b) falls under Part III of the Federal Constitution and provides as follows:

> Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) ...
>
> (b) every person born or after Malaysia Day, *and having any of the qualifications specified in Part II of the Second Schedule*.

The relevant qualification in Part II of the Second Schedule in this case is s 1(c) and reads as follows:

1 Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:

(a) ...

(b) ...

(c) *every person born outside the Federation whose father is at the time of the birth a citizen and whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow*, registered at a Consulate of the Federation or, if it occurs in Brunei or in a territory prescribed for this purpose by order of the Yang di-Pertuan Agong, registered with the Federal Government; ...

(d) ...

(e) ...

(Emphasis added.)

Thus under art 14(1)(b) read together with is 1(c) of Part II of the Second Schedule, the following persons are citizens by operation of law:

(a) every person born on or after Malaysia Day; and

(b) every person born outside the Federation;

(i) whose father is at the time of the birth a citizen; and

(ii) whose birth is, within one year of its occurrence or within such longer period as the Federal Government may in any particular case allow

(iii) registered at a consulate of the Federation or ....

(the rest of para (c) is not relevant for the purpose of our appeal).

[27] It is not disputed that the second and third appellants were born after Malaysia Day; born outside the Federation (in India) and their father (the first appellant) was at the time of their births a Malaysia citizen.

[28] It is also not in dispute that the births of the second and third appellants were not registered with the Malaysian Consulate in India with one year of their births.

[29] The learned judge was of the view that the appellants failed to fulfill this requirement as 'there was never any attempt by the applicants (the appellant) to seek for an extension of time required under s 1(c).

[30] The appellants however contended that they have taken all the necessary steps required of them for the respondents to issue them with certificates of citizenship and MyKad identification certificate.

A The question of them applying for an extension of time does not arise.

[31] In compliance with the said High Court order, they have submitted their application to have the birth of the second and third appellants registered with the Malaysian Consulate in Madras within the three month period stipulated in the said High Court order.

[32] The learned judge in her judgment ruled that the appellants can no longer rely on this said High Court order as it has been overruled by the Court of Appeal vide its order dated 21 March 2011. The appellants could not therefore contend that the question of them complying with s 1(c) of Part II of the Second Schedule is no longer an issue.

[33] Having considered the factual matrix of this case we were with respect to the learned judge, unable to agree with her.

[34] We find the appellants' submission that they have taken all the steps required of them to fulfill the requirements of art 14(1) read together with s 1(c) of Part II of the Second Schedule persuasive.

[35] Firstly, as contended by the appellants the said High Court order did not require them to apply for any extension of time. The said High Court order had, in fact declared the second and third appellants to be Malaysian citizens in accordance with art 14(1)(b) subject, inter alia, to the second and third appellants filing a formal application with the Malaysian Consulate in India for the registration of this birth within three months of the date of the said High Court order.

[36] In compliance with the said High Court order, the second and third appellants duly submitted their application with the Malaysian Consulate in Madras, India before 18 January 2010 (that is within the three months period prescribed by the said High Court order); there being no stay obtained by the respondents pending their appeal to the Court of Appeal.

[37] As seen earlier, their applications were duly processed by the Malaysian Consulate upon the appellants paying the processing fee of RM20. The letter from the Consulate General of Malaysia in Chennai (formerly Madras) confirmed the appellants' contention. The letter states as follows:

> This is to certify that R. MEENA MAHADEVAN, Female, Born on 16.07.1978, residing at 4/305 A, Jawahar Street, E.B Colony, West Ext. Madurai 625 017, Tamil Nadu, India and R THIRUPATHI, male, Born on 20.05.1975, residing at 3/88 Karayur Post, Tirumangalam Taluk, Madurai 625 701, Tamil Nadu, *has submitted applications for Birth Registration*.

2. We will forward their application to Registration Department of Malaysia, (JPN) for their necessary action.

(Exhibit RM15 at p 90 of record of appeal ('ROA')).

[38] Whilst it is true that the said High Court order was set aside by the Court of Appeal on 21 March 2011, the Court of Appeal also allowed the appellants the liberty to make the necessary application ('Responden-responden tidak dihalang untuk membuat permohonan yang diperlukan').

[39] In this regard it was clear that the second and third appellants' application were submitted to the second respondent as evidenced by the latter's letter dated 18 January 2011. Then, on 8 April 2011 (erroneously stated as 8 April 2010) the Attorney General's Chambers (AG's Chambers) wrote to the second respondent notifying the latter of the Court of Appeal's decision on 21 March 2009 and instructing the second respondent to process the second and third appellants' existing applications:

Oleh sebab responden-responden telah pun membuat permohonan dan pembayaran telah pun dibuat, maka permohonan tersebut bolehlah diproses seperti permohonan yang lain.

(Exhibit RM19).

[40] In other words the appellants were not required to submit a new application for the purpose of registering their births under art 14(1)(b) read together with s 1(c) of Part II of the Second Schedule.

[41] Acting on the aforesaid AG's Chambers' letter, the second respondent proceeded to process the appellants' application. On 21 September 2011, the second respondent informed the first appellant that his application for extension of time to register the second and third appellants' births is rejected on the grounds that they were found to have acquired Indian Citizenship and were never resident in Malaysia (exhs RM20–21 pp 104–105, ROA).

[42] The above decision of the second respondent as we have seen earlier was quashed by the learned judge pursuant to the appellants' application for judicial review. The learned judge found that the second respondent's decision rejecting the appellant's application for extension of time irrational and an error of law as the appellants' application was not for an extension of time. Instead the appellants had, pursuant to the said order of the High Court, filed an application for the second and third appellants to be registered as citizens of Malaysia under art 14(1)(b) read together with s 1(c) of Part II of the Second Schedule. The appellants did not dispute this finding of the learned judge as that had been their position from the outset.

[43] The respondents did not cross-appeal this part of the learned judge's decision. The effect of the respondent's failure to cross-appeal is that the respondents accept the learned judge's finding that the appellants' application was not for an extension of time but an application for the second and third appellants to be registered as citizens under art 14(1)(b) read together with s 1(c) of Part II of the Second Schedule.

[44] As found by the learned judge the appellants when submitting their applications '... relied on the order of the High Court which makes no mention of the requirement to extend time stipulated under s 1(c) of Part II of the Second Schedule' (p 18 of the supplementary ROA).

[45] Although the said order of the High Court had been set aside by the Court of Appeal, the appellants were not asked to file a new application for extension of time.

[46] Instead the second respondent was advised by the AG's Chambers vide their said letter of 8 April 2011 that as the appellants had submitted their applications (to the Malaysian Consulate in India) and the requisite processing fee of RM20 per application has been paid, the second respondent can proceed to process the appellants' application accordingly.

[47] The second respondent as we had seen treated the appellants' applications as applications for extension of time to register the births of the second and third appellants and decided to reject the appellants' application on the grounds stated earlier.

[48] The learned judge found the second respondent committed an error of law in treating the appellants' applications as applications for extension of time and accordingly quashed the second respondent's decision on this ground.

[49] The learned judge was of the view that as there had been no application for extension of time made by the appellants s 1(c) of Part II of the Second Schedule had not been complied with and accordingly the appellants were not entitled to an order of mandamus.

[50] In our view, bearing in mind the factual matrix of this case and the sequence of events that took place the learned judge erred in arriving at the aforesaid conclusion.

[51] Under s 1(c) of Part II of the Second Schedule the qualifications required of a person born outside the Federation (after Malaysia Day) to be a citizen by operation of law is that he or she *must be registered with the Malaysian*

Consulate within one year of the person's birth *or within such longer period as the Federal Government may in any particular case allow*.

[52] While this implies that there must be an application for extension of time if a person's birth is to be registered outside the one year period provided under s 1(c) above, the fact remains that the appellants application to be registered as citizens by operation of law was accepted by the Malaysian Consulate and the processing fee of RM20 paid even though they were not applications for extension of time (no doubt in view of the said High Court order). Even after the said High Court order was set aside, the AG's Chambers continued to treat the appellants' existing applications as correct and proper as evidenced by their letter of 8 April 2011 to the second respondent which was copied to the appellant's solicitors.

[53] It was only the second respondent that had erroneously treated the appellants' applications as an application for extension of time and decided to reject it.

[54] Having treated and having accepted the appellants' applications as applications for the registration of the second and third appellants as citizens by operation of law and the respondents not appealing against the order of the court quashing the decision of the second respondent, it can be inferred thereby that the Federal Government has impliedly agreed to allow the registration of the appellants' birth beyond the one year period (without the necessity of an application for extension of time).

[55] As s 1(c) itself does not prescribe the manner in which such extension may be applied for it is our considered opinion that so long as it can be shown (or inferred in this case) that the appellants have complied in substance with the requirements of s 1(c), Part II of the Second Schedule that is sufficient compliance.

[56] In view of that the appellants have to our minds satisfied the requirements of s 1(c) of Part II of the Second Schedule and consequently the learned judge erred in holding that the appellants have not fulfilled the requirements of s 1(c) of Part II of the Second Schedule as they had failed to apply for an extension of time.

[57] As the requirements of s 1(c) of Part II of the Second Schedule have been complied with, it was therefore incumbent on the respondents, in particular the second respondent to process the appellants' applications and issue the documents prayed for by the appellants in prayer two of the judicial review application. In other words this is a fit and proper case for the court to grant the order of mandamus as the five conditions set out in s 44(1) of the SRA in

particular condition (b) has been complied with.

For ease of reference we set out below s 44(1) of the SRA:

> 44 (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:
>
> Provided that –
>
> (a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;
>
> (b) *such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character*;
>
> (c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;
>
> (d) the applicant has no other specific and adequate legal remedy; and
>
> (e) the remedy given by the order applied for will be complete. (Emphasis added.)

[58] The appeal is accordingly allowed and the learned judge's decision is set aside and the order for prayer (2) of the appellants' applications is accordingly granted.

[59] We awarded costs of RM10,000 to the appellants and the deposit accordingly refunded.

Appeal allowed with costs of RM 10,000)

Reported by Dzulqarnain Ab Fatar